Court No.3

Criminal Revision No. 659/2001
(Old No. 938/1990)

Ram Kishore ….. Revisionist.

Vs.

State …. Respondent.

Hon'ble Irshad Hussain, J.

This criminal revision under section 397/401 of the Code of Criminal Procedure is directed against the judgment and order dated 7-6-1990 in criminal appeal No. 118 of 1989 passed by the then Sessions Judge, Nainital confirming the judgment and order dated 25-10-1989 passed by C.J.M., Nainaital in criminal case No. 806 of 1988, convicting and sentencing the revisionist-accused to undergo two years R.I. under section 379 I.P.C.

(2). Heard Sri Rajesh Joshi learned counsel for the revisionist and learned A.G.A. and perused the record.

(3). The F.I.R. of the case was lodged by complainant Nityanand Pant (P.W.1) on 24.4.1988 at 10.30 a.m. at P.S. Tallital, Nainital. It was alleged that the revisionist-accused Ram Kishore who was a band master and had performed his duties as such in the marriage of complainant's son Mahesh Chand Pant came to see off the members of the marriage party at 9.30 a.m. on 24.4.1988 inside the roadways passenger bus. The revisionist-accused felicitated the said bride-groom by shake hand and in the process committed theft of a sum of Rs. 5000/- from the pocket of the complainant. When the complainant came to know that the said sum was missing from his pocket he was told that the theft has been committed by the said Ram Kishore who was searched and arrested by the complainant on the Nainital-Haldwani road near country made liquor shop. He was taken to the police station and report, Ex.Ka.1 was lodged. The revisionist-accused was formally taken into custody at the police station vide memo, Ex.Ka.3. On completion of the investigation charge sheet was submitted against him on 2.5.1988.

(4). At the trial prosecution examined 4 witnesses. Of these P.W., Sri Nityanand is the complainant. He gave out that he had not seen any body removing money from his pocket. P.W.2, Puran Chand Pandey was one of the member of the marriage party and he gave evidence that he was told by a boy that the purse of the complainant was with the revisionist-accused. He himself had not seen the commission of theft by the said culprit. He was also declared hostile by the prosecution. P.W.3, constable Shiv Singh formally proved the check F.I.R. and documents pertaining to the investigation. P.W.4, Bhupesh Pant is said to be the eye witness of the occurrence but in cross examination he categorically stated that he had not raised any alarm when the revisionist-accused was removing the purse from the pocket of the complainant. This boy was accompanied by his brother and mother also but he also did not tell him about it when the theft was being committed.

(5)/ Revisionist-accused denied the accusation of the prosecution and stated that he had been wrongly implicated in the case. On the basis of the analysis of the evidence learned C.J.M. found the theft proved against the revisionist-accused beyond reasonable doubt and accordingly convicted and sentenced him to undergo two years R.I. under section 379 I.P.C. Aggrieved, appeal was preferred by the revisionist-accused but the same was dismissed as stated above. The learned Sessions Judge opined that the evidence of P.W.4, Bhupesh Pant being positive and clinching prove the incident of theft and further observed that since this witness had seen the accused removing the money bag and has told this fact to the complainant, the evidence of the complainant goes to corroborate the prosecution case in substance and accordingly did not find any merit in the appeal.

(6). It is well settled that under revisional jurisdiction the High Court will interfere in the judgment of the appellate court which up-held the conviction recorded by the trial court only when there is some glaring defect or error either in the procedure or in the view of the law or evidence taken leading to a flagrant mis-carriage of justice. The learned counsel for the revisionist-accused vehemently argued that the instant case fall in this

category because the evidence of only so called eye-witness Bhupesh Pant (P.W.4) being shaky and discrepant was not sufficient to prove the guilt of the revisionist-accused beyond reasonable doubt. As stated above complainant P.W.1, another witness P.W.2 have not seen the revisionist-accused removing the money bag. P.W.4 Bhupesh Pant claimed to have seen the act of theft being committed by the revisionist-accused but strangely enough he neither raised any alarm at that time nor told about it to his brother and mother with whom he was in the marriage party and had boarded the passenger bus. According to this witness there were about 50 people inside the bus and except this boy none other came forward to claim that the act of theft being committed was witnessed by them. Since this witness has not raised any alarm and did not tell about this at that very moment to others, raise grave doubt in his evidence and credibility. It is also significant that nothing incriminating was recovered from the revisionist-accused although he was arrested soon after the alleged occurrence. Therefore placing of implicit reliance on the shaky evidence of this witness is nothing but manifest error in the appreciation of the evidence which definitely resulted in mis-carriage of justice. Consequently this is a fit case in which the revisional jurisdiction need to be invoked to prevent failure of justice. In other words there was absolutely no reliable evidence to draw an inference of guilt of the revisionist-accused and charge under section 379 I.P.C. was not proved against him beyond reasonable doubt.

(7). The revisionist-accused therefore should have been held not guilty and acquitted of the charge under section 379 I.P.C.

(8). In view of the above this revision has merit and substance and is accordingly allowed. The judgment and order dated 7-6-1990 passed by the Sessions Judge in criminal appeal No. 118/1989 as well as the judgment and order dated 25.10.1989 passed by the C.J.M, Nainital in criminal case No. 806/1988 State vs. Ram Kishore of P.S. Tallital convicting the revisionist-accused are set aside. The revisionist-accused is held not guilty

and acquitted of the charge under section 379 I.P.C. He is on bail. His bail bonds are cancelled and sureties discharged.

(Irshad Hussain, J.)

Dated: 16-9-2003

ISB